

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADRIENNE HUDSON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

FIRST TRANSIT, INC.,

Defendant.

No. C 10-03158 WHA

**ORDER APPROVING AMENDED
STIPULATED PROTECTIVE ORDER
SUBJECT TO STATED CONDITIONS**

The parties have submitted an “amended stipulation of confidentiality and [proposed] protective order.” A protective order has already been in effect in this action since November 2010 (Dkt. Nos. 28–29). A review of the parties’ new submission reveals only one proposed addition, in paragraph 19, which states: “A third party that provides documents or information to any party in connection with the action will have the same rights under the Protective Order as the parties to this action.” This addition is **APPROVED**, except that it shall not be construed to prohibit a third party from seeking additional protections.

In addition, the amended stipulated protective order is generally **APPROVED**, subject to the following conditions, including adherence to the Ninth Circuit’s strict caution against sealing orders (as set out below):

1. The parties must make a good-faith determination that any information designated “confidential” truly warrants protection under Rule 26(c) of the Federal Rules of Civil Procedure. Designations of material as

1 “confidential” must be narrowly tailored to include only material for which there
2 is good cause. A pattern of over-designation may lead to an order un-designating
3 all or most materials on a wholesale basis.

4 2. In order to be treated as confidential, any materials filed with the
5 Court must be lodged with a request for filing under seal in compliance with Civil
6 Local Rule 79-5. Please limit your requests for sealing to only those narrowly
7 tailored portions of materials for which good cause to seal exists. Please include
8 all other portions of your materials in the public file and clearly indicate therein
9 where material has been redacted and sealed. Each filing requires an
10 individualized sealing order; blanket prospective authorizations are not allowed
11 by Civil Local Rule 79-5.

12 3. Chambers copies should include all material — both redacted and
13 unredacted — so that chambers staff does not have to reassemble the whole brief
14 or declaration. Although chambers copies should clearly designate which
15 portions are confidential, chambers copies with confidential materials will be
16 handled like all other chambers copies of materials without special restriction, and
17 will typically be recycled, not shredded.

18 4. In *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006),
19 the Ninth Circuit held that *more* than good cause, indeed, “compelling reasons”
20 are required to seal documents used in dispositive motions, just as compelling
21 reasons would be needed to justify a closure of a courtroom during trial.
22 Otherwise, the Ninth Circuit held, public access to the work of the courts will be
23 unduly compromised. Therefore, no request for a sealing order will be allowed
24 on summary judgment motions (or other dispositive motions) unless the movant
25 first shows a “compelling reason,” a substantially higher standard than “good
26 cause.” This will be true regardless of any stipulation by the parties. *Counsel are*
27 *warned that most summary judgment motions and supporting material should be*
28 *completely open to public view.* Only social security numbers, names of

1 juveniles, home addresses and phone numbers, and trade secrets of a compelling
2 nature (like the recipe for Coca Cola, for example) will qualify. If the courtroom
3 would not be closed for the information, nor should any summary judgment
4 proceedings, which are, in effect, a substitute for trial. Motions *in limine* are also
5 part of the trial and must likewise be laid bare absent compelling reasons. Please
6 comply fully. Noncompliant submissions are liable to be stricken in their
7 entirety.

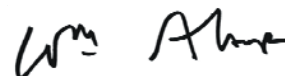
8 5. Any confidential materials used openly in court hearings or trial
9 will not be treated in any special manner absent a further order.

10 6. This order does not preclude any party from moving to
11 undesignate information or documents that have been designated as confidential.
12 The party seeking to designate material as confidential has the burden of
13 establishing that the material is entitled to protection.

14 7. The Court will retain jurisdiction over disputes arising from the
15 proposed and stipulated protective order for only **NINETY DAYS** after final
16 termination of the action.

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18 **IT IS SO ORDERED.**

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20 Dated: June 23, 2011.



21 WILLIAM ALSUP
22 UNITED STATES DISTRICT JUDGE
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